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ABSTRACT

Collective negotiations in education have become the subject of legislative proposals at Federal, State, and local levels. Congress is currently considering the NEA-proposed statute, "Professional Negotiation Act for Public Education, 1969," which would regulate employment relationships between boards of education and their professional personnel. States adopting legislation substantially equivalent to this NEA proposal would not be bound by the statute. Current trends in State legislation include attempts to provide legal frameworks for dealing with: (1) impasse resolution; (2) bargaining scope; (3) negotiation procedure; (4) student conduct and discipline; (5) administrator negotiations; (6) local teacher organization autonomy; and (7) negotiated contract time span. Where there is no State legislation governing employer-employee relations, school districts have introduced such techniques as multilateral bargaining and "fines" for employee violation of rules and regulations. (JH)

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SIGNIFICANT LEGISLATION TRENDS IN NEGOTIATIONS:
FEDERAL LAW - STATE LAW - NO LAW SITUATIONS

Outline of Remarks
of
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Association of School Business Officials
of the United States and Canada
Phoenix, Arizona
October 22, 1969

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Today we will consider significant legislation trends in negotiations between local public school districts and school employee organizations in the United States at three separate strata of government - (a) federal, (b) state, and (c) local public school district levels.

Our consideration of legislation trends in school employer-employee negotiations at the federal level will consist primarily of an analysis of the current National Education Association's proposal which, if adopted by the Congress, would be entitled the "Professional Negotiation Act for Public Education, 1969." We will also look at the ramifications which this Act, or some similar federal law, would have on the employer-employee relations of local public school districts and their nonteaching, so-called nonprofessional employees.

We will then turn our attention to legislation trends in those states which already have some form of law now on the books to regulate employer-employee relations in local public school districts. Finally, we will review the trends in legislating on negotiations which are developing in states where local public school boards are unfettered by statute and thus, as a practical matter, are free to write their own laws at the local level establishing the legal framework in which employer-employee negotiations are conducted in their own school districts.

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A. FEDERAL LAW

Since 1967, when the United States Supreme Court decided Maryland v. Wirtz, and thereby

. . . rebuffed 28 states which had joined in an attempt to invalidate this extension of the minimum wage, overtime compensation, child labor, equal pay, record keeping and other requirements (of the Federal Wage and Hour Law)¹

to public schools, colleges, hospitals, and medical-care facilities, the issue of a federal law regulating employer-employee relations in local public school districts has been widely and vigorously discussed throughout the nation. The old "legal" objection to the federal government reaching down into the levels of local government to control relations between local governmental entities and their employees through a "public 'employees' Wagner Act" was quashed by the U.S. Supreme Court by Maryland v. Wirtz. In the words of Mr. Justice Harlan, speaking about the arguments made by the 28 states:

Appellants' characterization of the question in this case as whether Congress may, under the guise of the commerce power, tell the States how to perform medical and educational functions is not factually accurate. Congress has "interfered with" these state functions only to the extent of providing that when a State employs people in performing such functions it is subject to the same restrictions as a wide range of other employers whose activities affect commerce, including privately owned schools and hospitals.²

In consonance with Maryland v. Wirtz, the National Education Association has proposed that the Congress enact a "federal professional negotiation statute." As revised in March, 1969, this federal law proposal has been summarized as follows:³

1. The statute would regulate the employment relationship between boards of education operating under the laws of any state, territory or possession of the United States and those persons employed by them in a professional educational capacity.

1. 68 Labor Relations Reporter 365 (8-12-68).

2. Ibid.

3. Educators Negotiating Service, May 15, 1969, Educators Service Bureau, Inc., 1507 M Street, N.W., Washington, D.C. 20005.

2. Administration of the statute would be by an impartial agency within the Department of Health, Education and Welfare, consisting of five members appointed by the President with the approval of the Senate. The Commission's principal office would be in the District of Columbia, but it would be able to establish state and regional offices.

3. The Commission would be responsible for interpreting, applying and enforcing all provisions of the statute, including the determination of all questions relating to employee representation, and would employ an Executive Director, a General Counsel, and such other persons as would be required for it to carry out its functions.

4. Each board of education would negotiate over terms and conditions of professional service and other matters of mutual concern exclusively with the employee organization that represented a majority of the employees in an appropriate unit.

5. An employee organization would be able to demonstrate its majority support through a verified membership list or other appropriate evidence. An election would generally be held only when another employee organization claimed majority support and submitted as evidence a verified membership list containing at least 30% of the employees in the unit.

6. Impasses in negotiation over the terms and conditions of professional service and other matters of mutual concern would be resolved as follows:

a. A mediator would be appointed by the Commission and would meet with the parties in an effort to effect a mutually acceptable agreement;

b. If the mediator were not successful in resolving the dispute within 15 days after his appointment, an arbitrator with power to make findings of fact and to recommend terms of settlement would be selected by the parties, or if they were unable to agree upon a mutually acceptable person, would be appointed by the Commission. The recommendations of the arbitrator would be advisory only.

7. Disputes involving the interpretation, application or violation of the terms of negotiated agreements could be submitted to final and binding arbitration pursuant to procedures set forth in such agreements or, in the absence of such procedures, could be submitted by either party to final and binding arbitration in accordance with the rules of the Commission.

8. Strikes would be enjoined only if they posed a clear and present danger to the public health or safety, or if the employee organization had not attempted to utilize the impasse procedures provided in the statute.

9. It would be unlawful for a board of education to:

a. impose reprisals or discriminate against employees for exercising the rights guaranteed by the statute;

b. fail to negotiate in good faith with a recognized employee organization;

c. deny an employee organization a place to meet, access to work areas, or the use of bulletin boards and mailboxes, or refuse to deduct membership dues for an employee organization, and, conversely, once an organization had been recognized as the employee representative it would be unlawful for a board to grant those rights to any other employee organization.

10. It would be unlawful for an employee organization to:

a. attempt to cause a board to commit an act prohibited by Section 9 above; or

b. fail to negotiate in good faith.

11. A charge that an act prohibited by Section 9 or 10 above had been committed could be filed with the Commission, and the Commission would be empowered to take appropriate steps to deal with the matter.

12. If any state, territory or possession established statutory procedures for regulating employer-employee relations that were substantially equivalent to those provided in this statute, it would be permitted to operate under its own statute.

If the Congress were to adopt the "federal professional negotiation statute" applicable to school district employees holding teaching or administrative credentials, it is fair to predict that so-called "nonprofessional" employees of school districts would soon come under the umbrella of federal labor-management laws.

In states which have some form of negotiations statutes regulating employer-employee relations of local public school districts, there are at least nine discernable trends for the near future which may be roughly outlined as follows:

1. Strike vs. Other Impasse Resolution

State Legislatures will attempt to strengthen the remedies available to resolve the impasse situation, which arises when the local school board and the school district employee organization cannot agree on a matter under

negotiation. Local public school boards in more states will be compelled to deal with the mediators, fact-finders or arbitrators, whose powers will range from making recommendations to ordering arbitral awards, depending on the school district employer-employee relations climate in a particular state.⁴ This recourse to the independent, neutral third party "problem-solver" will be traded off in State Legislatures either for new "no-strike" legislation or considerably more stern "no-strike" laws. The difficult practical problems of dealing with strikes, slow-downs, partial work-stoppages, or one-day professional holidays by school district employees, together with public outrage engendered by the sheer inconvenience of fully or semi-closed schools and resentment against striking school employees, render strikes and the many forms of "mini-strikes" a natural target for State Legislatures. If nothing else, the New York City school teacher strikes of recent years have shown that repressive legislation against teacher employee strikes simply is not enough. This has led some State Legislatures (and will lead others) to the conclusion that the quid pro quo for the strike by public school district employees is an impasse procedure which will guarantee that an independent, neutral third party will have a partial or complete voice in the final determination of an impasse problem.

2. Limitations on Scope of Bargaining

The application of the collective bargaining processes to the local public school district and its teacher organizations has resulted in an unique mutation. Under the claim of special professional competence, the scope of bargainable issues with "lay" school boards was initially made exceedingly broad and encompassed areas which in the private sector would have been judged as reserved for "management discretion" about which management had no duty to

4. Statutory Provisions on Impasse, Roesch, Educational Administration Center, Northern Illinois University, 1968.

bargain. Militancy of teacher organizations, court decisions and awakening State Legislatures are combining to begin restricting the virtually unlimited scope of school board-teacher negotiations. This trend will be slow-moving because ground already given up is difficult to regain. Its progress depends on the extent to which the People differentiate between "government by contract" and government by law.

3. Bargaining for More than State Standards

State laws usually set forth standards which must be adhered to by local public school districts in job-security, fringe benefits, and "professional status" matters. Local public school employee organizations will show an increasing tendency to expand on these state standards. More and more, state standards will be looked upon as state minimums and, therefore, fair game for the negotiations process.

4. Introduction of Full-Scale Collective Bargaining Where Not Now in Effect

Apparently there is an axiom among groups of school employees that local public school boards and teacher organizations will never be "full and equal partners" in the governance of education until there is an employer-employee relations framework which provides for collective bargaining resulting in binding, bilateral agreements that may be changed during the term of the contract only by mutual consent of both parties. When a dispute over the contract occurs, an independent, neutral third party aids in solving the problem. Where these elements of collective bargaining are not presently in state law, there will be considerable pressure to introduce them.

However, it is interesting to note that the Intergovernmental Advisory Group established by Executive Order effectively repudiated collective bargaining for public employees by concluding recently that:

. . . the Commission tends to view the meet and confer in good faith approach as being most appropriate in a majority of situations (involving employer-employee relations in State and local government situations).⁵

5. Agency Shop

This is an elemental union security provision. Basically, it requires members of a bargaining unit who are not members of the union which represents the bargaining unit in an exclusive bargaining unit situation to pay an amount equal to union dues; such funds usually are applied towards defraying the cost of a union welfare program open to the paying non-members as well as union members. This prevents "free rides" by employees who are not union members but who benefit from union representation. This is a trend noticeable primarily in those school districts which have been in the collective bargaining situation for some time and, in light of the industrial experience in the private sector, is hardly a surprise.

6. Student Conduct and Discipline

The upsurge of student unrest and the on-going redefinition of the civil rights of students by the courts have impelled school district employee organizations to focus more attention upon obtaining protection against bodily injury and property damage caused by students. In effect, school district employee organizations not only want school boards to insure their health, physical safety and property from injury by students but also to embark upon vigorous programs aimed at preventing errant students from harming the person or property of school employees.

7. Administrator Negotiations

The school administrator below the level of the Superintendency, and particularly school principals, are becoming increasingly resentful of the fact that in many school district employer-employee situations they are "odd men out."

5. 72 Labor Relations Reporter 106 (9-29-69)

This is especially true in states which have adopted the industrial model of collective bargaining and entered into collective bargaining contracts that sloughed the "middle-management" administrator's role in the governance of local public school districts. School administrators generally recognize that they are part of the "management team" but, for their own job security and maintenance of status, want their role more firmly spelled-out so that they will not be dependent upon the vagaries of the local school board and Superintendent. As a practical matter, they want their own written contract or their own verbal understanding with the school board and the Superintendent. And they will press for this right in the State Legislatures.

8. Push for Autonomy by Local Teacher Organizations in Larger School Districts

As local teacher organizations become more powerful, their political leadership becomes more concerned about the local school district employer-employee relations problems than about the less practical and more ephemeral problems with which the State Association concerns itself. The State Association, with its tremendous diversity of negotiating situations throughout its statewide membership, generally reduces problems to a lower common denominator than considered practical by larger urban school district teacher organizations. Moreover, the nature of the school problems faced by urban, suburban, and rural school districts clearly are becoming more sharply differentiated. Consequently, the larger, better-financed public school teacher organizations are embarking on a "go it alone" venture by splitting-off from state organizations. This is a trend particularly in those states having legislation according collective bargaining rights to teacher organizations but is mirrored elsewhere by growing strength of regional teacher organizations representing a more compact community of interests than is the case with statewide teacher organizations.

9. Longer Terms in Collective-Bargaining Type Contracts

This is a function of stability--both of the representative bargaining unit and the general economy. If the bargaining unit believes that its position is secure and that it can predict with reasonable confidence the growth of the economy, it will press for longer term collective bargaining contracts.

Where there is no State legislation governing employer-employee relations in local public school districts, there are at least two trends which deserve mention in our analysis:

1. Multi-lateral Bargaining

This is an attempt to bring to the bargaining table more participants than are usually contemplated in a straight management-labor bilateral situation. In the multi-lateral situation, many parties may sit at the "bargaining table," ranging from the P.T.A. to the local taxpayers association. The multi-lateral bargaining approach is an attempt to bring into play elements of the community which desire to be an active part of the bargaining process. The principal advantage is that these interested third-parties who are privy to bargaining lend stature to any agreements or settlements reached at the bargaining table; the primary disadvantage is that such third-parties really have no specific responsibility or clearly-defined role in the bargaining process and may assume a posture of intransigence without suffering any particular consequences and thereby disastrously impede meaningful and reasonable negotiations.

2. "Fines" imposed by local school boards against school district employee organizations.

Local public school districts do not possess police powers. Yet, school district employees, who are paid on a twice-a-month or monthly basis, usually have enough funds to their credit in the school district treasury at any particular time to make some school boards adopt punitive regulations which

purport to provide color of law to schemes whereby recalcitrant school employees are summarily punished by withholding specified salary amounts for violations of certain school district regulations. Unless such "fines" really are amounts of money withheld on a breach of contract theory because the employee did not provide his services due to being on strike, the "fine" theory is in legal hot-water. Any proposal to impose quasi-"fines" should be carefully considered by legal counsel of the school board.

The whole field of school district employer-employee relations is in a constant state of shifting. It is still a new area of local public school district concern today. Any statement identifying trends in this dynamic field is important as a practical matter only when the trends are relevant to the local situation. Your job is to determine relevancy and gear-up for the oncoming trend.

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Saturday
October 11, 1969